



This Order and Decision was followed by an Order and Decision in the 1st Quarter of 2006.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

In The Matter Of:)	
)	
DONNA FELECCIA,)	
)	
Complainant,)	
)	Charge No. 1999SF0713
and)	ALS No. S-11330
)	EEOC: 21B992240
SANGAMON COUNTY SHERIFF'S)	
DEPARTMENT)	
)	
Respondent.)	

Modified
ORDER AND DECISION

November 22, 2004

The Commission by a panel of three:
Commissioners David Chang, Yvette Kanter, and Marylee V. Freeman presiding.

On review of the recommended orders of Michael R. Robinson, Administrative Law Judge.

For Complainant: Mary Lee Leahy, Leahy Law Office

For Respondent: Brad Blodgett, Hinshaw & Culbertson

Illinois Human Rights Commission: James E. Snyder, General Counsel,
Matthew Z. Hammoudeh, Asst. General Counsel.

This matter comes before the Commission pursuant to a Recommended Order and Decision issued by Administrative Law Judge Michael R. Robinson, exceptions and a response filed thereto.

On review of Judge Robinson's recommendations, the public hearing record and the exceptions and response filed by the parties and for the reasons set forth herein, the Recommended Order and Decision is reversed in part and sustained in part. We find the manifest weight of the evidence to support the finding that the Respondent sexually harassed the Complainant.

I. Nature of the Case.

Donna Feleccia (Complainant) worked for the Sangamon County Sheriff's Department (Respondent) as a civilian employee, a records clerk. The Complainant filed a charge of sexual harassment against the Respondent, based on the conduct of one of the Respondent's supervisory employees, Sergeant Ron Yanor (Yanor).

In her Complaint, the Complainant asserts that she was a victim of sexual harassment when Yanor force kissed her, delivered a coffee cup with candy to her home, asked her if she wanted to have sex, and sent her a fictitious letter indicating that she may have been exposed to a communicable or sexually transmitted disease. The Complainant submits that Yanor's sending of the fictitious letter constituted actionable retaliation since the letter was drafted in response to the Complainant's prior rejection of his request to have sex.

The Respondent maintains that Yanor's conduct was insufficient to constitute sexual harassment.

II. Proceedings.

Following a public hearing Administrative Law Judge Michael Robinson issued a Recommended Order and Decision. Judge Robinson found that Yanor had engaged in bad behavior, but that the Respondent was not liable for sexual harassment for three main reasons:

1. Judge Robinson did not consider the November 1998 forced kiss, the December 1998 coffee cup delivery to Complainant's home, the December 1998 chance encounter at a local bar, and the December 1998 request for sex because he reasoned that they were outside the 180-day jurisdictional period for consideration as compensable acts by this Commission;
2. Judge Robinson found that Yanor's conduct - the fake Health Department sexually transmitted disease notice - although inappropriate, was not conduct of a sexual nature; and
3. Judge Robinson found that the Complainant did not demonstrate that the conduct had the purpose or effect of interfering with her working environment.

Judge Robinson also found that the Respondent was not liable on the retaliation charge because the Complainant failed to establish a *prima facie* case of retaliation.

The Complainant filed exceptions and the Respondent filed a response to the exceptions.

III. Findings.

Judge Robinson found that evidence of events occurring more than 180 days before the filing date of the Complainant's charge could not be considered. He found that there was some kind of 180-day bar against viewing them as part of the Complainant's proof, even if he found the events to have occurred. We disagree, as this is contrary to the manifest weight of the evidence.

Section 7A-102 of the Human Rights Act (775 ILCS 5/7A-102) grants the Commission jurisdiction only over civil rights violations committed within 180 days of the filing of the Charge of Discrimination, which took place in the instant matter on December 16, 1999. A charge of sexual harassment based on a hostile work environment is timely as long as any of the acts that contributed to the hostile environment occurred no more than 180 days before the claimant filed her charge unless (1) the acts within the jurisdictional period had no relation to those outside the period; or (2) for some other reason, the later act was no longer part of the same hostile environment claim. *Gusciara v. Lustig, et al.*, 346 Ill.App.3d 1012 (2d Dist 2004).

The Complainant has alleged that the Respondent committed a variety of sexually harassing acts that cumulatively created a hostile work environment. The only act that occurred within the 180-day jurisdictional period was the forged Department of Public Health sexually transmitted disease notice (taking place on the February 5, 1999). Nonetheless, the creation of a hostile work environment is a single prohibited employment practice, and the charge based on this alleged practice is timely "so long as an act contributing to that hostile environment [took] place within the statutory time period." *Gusciara v. Lustig, et al.*, 346 Ill App 3d 1012, citing *National R.R. Passenger Corp v Morgan*, 536 US 101, 122 S Ct 2061 (2002). Therefore, for purposes of determining the liability of the Respondent in this case, the entire time period of the hostile environment will be considered.

Although Judge Robinson indicated that these acts were not part of his consideration, he offered speculation of their value if he had considered them. This speculation is not part of his findings, as it is based on evidence that he did not consider. We do consider these acts as part of the weight of evidence.

The Illinois Human Rights Act defines sexual harassment as 'any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when ... such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.' 775 ILCS 5/2-101.

In November of 1998, Yanor invited the Complainant to accompany him to a local bar. The Complainant believed that Yanor's wife would accompany them, and that other individuals who were with Yanor at the Sheriff's annual cigar party earlier in the evening would be at the bar. Yanor arrived at the Complainant's home later that night without his wife. After staying a while in the bar, the Complainant became uncomfortable when she

realized that no one else from the Sheriff's department was at the bar. The Complainant then asked Yanor for a ride home. When they arrived at the Complainant's home, Yanor grabbed the Complainant's arm and asked for a kiss. When the Complainant refused and reminded Yanor that he was married, Yanor kept pleading for one kiss. The Complainant initially refused the second request for a kiss on the basis that they were "just friends". However, the Complainant felt threatened and eventually kissed Yanor after believing that he would not let go of her arm if she had refused.

In December of 1998, Yanor arrived at the Complainant's home with a Christmas cup filled with candies. Yanor did not stay long and left once the Complainant's ex-husband arrived at her home. In December of 1998, Yanor approached the Complainant at work and asked whether she would go to a motel with him for the night. The Complainant, in refusing Yanor's request, reminded Yanor that he was married.

The November 1998 incident where Yanor grabbed the Complainant's arm and would not let her leave the car until she kissed him is a sexual request by a supervisor tied with a physical threat of force; an act clearly sufficient to establish sexual harassment. Furthermore, Yanor's December 1998 request to spend the night in a motel with the Complainant clearly implies a request to have sexual intercourse. These acts, namely, the forcible request for a sexual favor and the motel request, constitute sexual harassment.

Harassment is not limited to acts of sexual desire, but rather is a broad term, which encompasses all forms of conduct that unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive, working environment. *Hildebrandt v. Il. Dept. of Natural Resources*, 347 F.3d 1014 at 1033 (7th Cir 2003), citing *Haugerud v. Amery School Dist.*, 259 F.3d 678 at 692 (7th Cir 2001).

On February 5, 1999, the Complainant received an envelope at work; it was a letter from the Department of Public Health advising her that she may have a sexually transmitted disease. This letter was on official stationery of the Illinois Department of Public Health and provided in part:

"This is to inform you that you may have recently been exposed to a communicable or sexually transmitted disease. A confidential source who has tested positive has brought this matter to our attention."

The Complainant became very upset and was "visibly shaking, voice quivering, on the verge of tears." This clearly had the effect of interfering with the Complainant's work environment where it was both severe and humiliating. The Complainant immediately went to the Department of Public Health where she learned the letter was a forgery.

After the investigation by the Illinois State Police was complete, the Respondent admitted that when Yanor was confronted, he admitted that he sent the forged letter. Sheriff Williamson told the Complainant that Yanor was suspended for four days and this was the most that could be given without the merit board "finding out." Sheriff Williamson also told the Complainant that she was not to go to the media, not to press sexual harassment charges or go near Yanor. The Complainant then went to Chief

Deputy Sacco who told the Complainant that the punishment was complete and that Yanor could not be punished twice. In fact, Judge Robinson found that the Sheriff spoke to the Department of Public Health on Yanor's behalf and then told the Complainant that the Department of Public Health would not be pressing any criminal charges against Yanor. We find the Respondent's conduct reprehensible, where they not only failed to take reasonable corrective action, but also, where they told the Complainant not to press charges or go near Yanor.

Sexual Harassment Charge.

We find that Yanor's conduct, specifically his unwelcome sexual advances and forged Department of Public Health letter, had the effect of substantially interfering with the Complainant's work performance and created an intimidating, hostile and offensive work environment. The administrative law judge's recommendation to dismiss the sexual harassment charge is reversed. The matter is remanded for further proceedings on that charge.

Retaliation Charge.

Judge Robinson found that the Complainant failed to establish a *prima facie* case of retaliation. We agree, as this is supported by the manifest weight of the evidence. We find that the Complainant has not presented *prima facie* evidence of unlawful retaliation. The Complainant has not presented evidence of adverse employment actions in retaliation for opposing sexual harassment. The administrative law judge's recommendation that this charge be dismissed is sustained.

IT IS HEREBY ORDERED THAT:

1. The Recommended Order and Decision issued in this matter is reversed in part and sustained in part; and
2. This matter is remanded to the Chief Administrative Law Judge for proceedings to determine damages, attorney fees and costs.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 22nd day of November 2004

Commissioner Yvette Kanter

Yvette Kanter

Commissioner Marylee V. Freeman

George V. Freund

Commissioner David Chang

David Chang